IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1039 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANDABEN ISHWARBHAI BHOI
Versus
THE STATE OF GUJARAT & ORS

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Appearance :
MR J.V. JAPEE for Applicant
MR A.Y. KOGJE APPR for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 23/06/2006

ORAL JUDGMENT

1 Heard learned Advocate Mr. J.V. Japee for applicant and learned APP Mr. A.Y. Kogje for respondents. RULE. Service of Rule is waived by learned APP Mr. Kogje as learned Advocates for the parties request for hearing the matter finally today.

2 As per the brief facts of the case, in respect of one jeep vehicle bearing No. GUU 8793 owned by the present petitioner, some non-cognizable cases under the Motor Vehicles Act have been filed by the Department of Respondent No.3 and on that ground the vehicle of the petitioner came to be detained by respondent No.3. Now respondents No. 2 and 3 are insisting that unless and until the present petitioner compounds those non-cognizable cases under the Motor Vehicles Act and pays penalty of the pending cases, the jeep would not be released. The petitioner expressed her wish to the respondents No. 2 and 3 that she did not intend to compound those cases and those cases must be referred to the court of competent jurisdiction where the petitioner might have an opportunity to contest said non-cognizable cases and plead her defence. Even then, till today, neither those non-cognizable cases are sent to the court competent nor the vehicle in question is released. It is the submission on behalf of the petitioner that respondents No. 2 and 3 compels the petitioner to compound those non-cognizable cases and to pay penalty for releasing the said vehicle which is lying in Himatnagar Town Police Station and is exposed to damages and deterioration. Therefore, this Special Criminal Application is

preferred for issuing appropriate writ to direct respondents No. 2 and 3 to forward forthwith all the non-cognizable cases under the Motor Vehicles Act in respect of Vehicle Jeep No. GUU 8793 to the court of competent jurisdiction. It is also prayed that, forwarding all said pending non-cognizable cases to the court of competent jurisdiction, Vehicle Jeep No. GUU 8793 detained by respondent No. 3 be released to the petitioner.

3 After hearing learned counsels and going through the record, it appears that, this issue has been raised many times before this Court and necessary orders were also passed by this Court. The learned Advocate for applicant has referred to the decisions of this Court in Special Criminal Application No. 1828 of 2005 decided on 26th of December, 2005 and other matters in Special Criminal Application Nos. 366 of 1999 and Special Criminal Application No. 838 of 1999, wherein this Court had directed the petitioner to furnish an Undertaking and had also directed the authority concerned to release the vehicle on the strength of Undertaking of the petitioner and to forward said non-cognizable cases to the court of competent jurisdiction. The reasons adopted by this Court in said Special Criminal Applications are also adopted in this Special Criminal Application as almost same circumstances arises in the present case as well. In view of above matter, it is directed that the petitioner shall furnish an Undertaking within one week from today to respondents No. 2 and 3 to the effect that the petitioner shall pay

the government dues including the road tax, etc. and shall not change colour of her vehicles. The petitioner shall also undertake that the body structure of the vehicle in question shall be maintained as it is and the vehicle shall be kept in road worthy condition. The petitioner shall also undertake that the vehicle in question shall be plied in accordance with the rules and regulations of the authority concerned and in accordance with law.

4 It is further directed that on furnishing the above said Undertaking in above said manner by the petitioner before respondents No. 2 and 3, the respondent No.3 shall release the vehicle Jeep bearing No. GUU 8793 to the petitioner and shall forward all the non-cognizable cases in respect of this vehicle to the court of competent jurisdiction. This is so because compounding of the offences by paying penalty cannot be made a pre-condition for releasing vehicle detained by respondent No.3 and that the petitioner has a legal right to defend such non-cognizable cases under the Motor Vehicles Act.

5 With the above directions, this Special Criminal Application is disposed of. Rule is made absolute to the above extent. DS permitted.

(J. R. VORA, J.)

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